

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

~~1993 - 1~~
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

For Construction Permit for a
New FM Station on channel 279A
in El Rio, California

) MM DOCKET NO. 93-87
)
)
)
)
)
)
)
)
)
)
)

File No. BPH-911216MC

File No. BPH-911216MD

RECEIVED

FEB - 1 1994

To: Honorable John M. Frysiak
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**DIRECT WRITTEN CASE OF LOREN F. SELZNICK
ON THE ADDED ISSUES**

Robert Lewis Thompson
PEPPER & CORAZZINI
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

December 30, 1993

TABLE OF CONTENTS

Exhibit

Title

4

1991 Financial Certification Issue

5

Present Financial Qualifications Issue

Federal Communications Commission

Docket No. 93-87 Exhibit No. 4

Presented by SELZNICK

Disposition { Identified ✓
Received _____
Rejected _____

Reporter M. K. FLEISHMAN

Date 1/12/94

1991 Financial Certification Issue

1. As early as the Summer of 1985, when I had a solo legal practice in Staten Island, New York, I began to consider quitting my practice of law and resuming my radio career. At that time, I was subscribing to Broadcasting magazine. I attended the 1985 National Association of Broadcasters radio convention in Dallas, Texas. I visited a radio station for sale in Geneva, New York, with my former chief engineer at WVER-FM, Ithaca, New York, John B. Hill, but we were not sufficiently satisfied with either the market or the facilities to make an offer. Shortly, thereafter, I was offered a position as a law clerk for the Honorable Vito J. Titone, of the New York State Court of Appeals and put my desire to purchase a radio station on hold.

2. In 1987, I began working at Breed, Abbott & Morgan as a litigation associate. It was still in my mind that I wanted to purchase and manage a radio station. In the Spring of 1991, I again began to seriously consider quitting the practice of law and resuming my radio career. At about this time, I resumed my subscription to Broadcasting magazine and kept abreast of radio stations for sale and the prices of stations in various markets in Southern California where I was interested in relocating.

3. In May, 1991, I took an exploratory trip to California with my friend, Susan L. Valle. At this time, I was aware of a radio station for sale in the Fresno area. Ms Valle and I drove around the state of California and spent some time in Fresno as well as looking

at other areas of Southern California. We also stayed for part of the time at the California home of my law colleague and friend Joseph P. Dailey and his family who had moved to Anaheim from New York City in early 1991. Mr. Dailey and I have practiced law together on nearly a daily basis since I joined his law firm, Breed, Abbott & Morgan, in 1987. Even after Mr. Dailey resigned his partnership in the firm and moved to California in 1991, he and I remained close friends and continued to practice law together on a daily basis. I see Mr. Dailey when he visits at the firm's New York office at least monthly and speak with him on the telephone nearly every day. I consider Mr. Dailey to be like a member of my extended family.

4. During the summer of 1991, I spoke with various media brokers which I had found in Broadcasting magazine and Broadcasting Yearbook about my interest in acquiring and managing a radio station in Southern California. In the late summer of 1991, I traveled to California again, attended the NAB radio convention in San Francisco and again stayed at the home of Mr. Dailey and his family in Anaheim while I visited at least three radio stations with a broker which were on the market in Southern California.

5. When I discussed the possibility of buying a radio station with Mr. Dailey during the Spring and Summer of 1991, he told me about his previous interest in buying a radio station and he cautioned me against paying what he considered to be prices at excessive multiples of cash flow for radio stations at that time. I ultimately made one offer for an AM-FM combination approximately one hour northeast of Los Angeles, but that offer was not accepted.

6. Shortly after my return to New York, I became aware of the El Rio, California FM filing window when I read about it in

Broadcasting magazine. I discussed this business opportunity with several friends, family members and law colleagues, including Mr. Dailey. In my initial discussions about El Rio with Mr. Dailey, he told me he thought that acquiring a license and building a radio station was a great idea. As I continued to consider my El Rio FM options, another former law colleague--Derrick Cephas--told me that his investment group that owned a radio station would be willing to provide financing for the potential El Rio FM project. About a month later, in November 1991, I mentioned to Mr. Dailey that I had not yet reached an agreement with the Cephas group and Mr. Dailey offered to loan me the money for the El Rio FM project.

7. In late November, I told Mr. Dailey in one of our almost daily telephone conversations that I had estimated construction and start-up costs for the El Rio FM station to be slightly more than \$350,000 and I asked him if he still was willing to loan me that entire amount. Mr. Dailey assured me that he was and I proceeded to complete an FCC application for filing. After reviewing both the FCC Form 301 application and the Instructions thereto and also discussing the application with my counsel Peter Tannenwald, Esq., of Arent, Fox, Kintner, Plotkin and Kahn, I called Mr. Dailey to discuss the details of his financial commitment to my FCC application for the El Rio FM station. When he asked if I needed a written commitment letter, I told him, based on my study of the Instructions to FCC Form 301 and from my discussion with my counsel, that I did not need a written commitment letter from him. However, I told Mr. Dailey that he needed to have net liquid assets equal to the total amount of my estimated costs, \$360,070. He pulled up his then-current Balance Sheet on his computer screen in California, and with me on the tele-

phone from New York, we went over his net liquid assets item by item. A copy of Mr. Dailey's balance sheet as of November 30, 1991--within a few days or weeks of our telephone conversation--is attached hereto as Appendix A. Based upon our item-by-item review of his balance sheet, I concluded that Mr. Dailey had substantially more than \$360,070 in net liquid assets. His cash and cash equivalents on hand exceeded \$360,070. I subsequently signed my Form 301 application on December 13, 1991, and it was filed at the FCC on December 16, 1991.

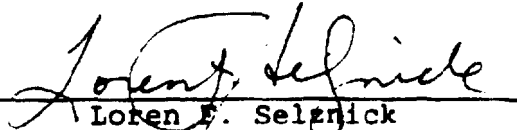
8. Although Mr. Dailey and I did not expressly discuss the precise terms of his proposed loan to my FM project, I understood from the outset that it would be based on standard commercial terms for start-up businesses, which I also have understood from the outset would mean a 60-month note, an interest rate of several points above prime, secured by the stations' assets and guaranteed by me personally.

9. Mr. Dailey subsequently told me that he discussed the El Rio FM project with his brother-in-law, Terry McNulty, who is in the radio business in Pennsylvania.

10. Mr. Dailey has testified under oath in this proceeding that he did not merely "express a willingness" to lend \$360,070 to me for the El Rio FM station, he told me prior to December 13, 1991 that he could and would lend me that amount of money. See Dailey Deposition Tr. 56-58; 65-67; 81-83, attached hereto as Appendix B. Mr. Dailey has confirmed under oath, he gave me an "unconditional" commitment to finance the FM project. See Appendix B at Tr. 65.

VERIFICATION

I, Loren F. Selznick, do verify under penalty of perjury that the evidence contained in the foregoing Exhibit No. 4 is true and correct.


Loren F. Selznick

December 30, 1993

Federal Communications Commission

Docket No. 93-87 Exhibit No. 5

Presented by SELZNICK

Disposition	{	Identified <input checked="" type="checkbox"/>	_____
		Received	_____
		Rejected	_____

Reporter M.K. FLEISHMAN

Date 2/22/94

Present Financial Qualifications

1. When I estimated in 1991 that my FM station's construction and initial operating costs would total \$360,070, I contemplated building a large FM station that would accommodate a 24-hour live service, would utilize all brand new equipment and would have substantial operating expenses reflecting such a large-station operation.

2. Approximately two weeks before lengthy settlement talks with Raymond Clanton broke down on approximately August 9, 1993, I began to restudy the viability of a proposed new FM station at El Rio. In settlement talks with Mr. Clanton, I had already come to recognize that my original cost estimate -- as stated in my December 1991 application -- was unreasonably and artificially high. Before settlement talks collapsed last summer, Mr. Clanton and I had discussed the need in today's competitive FM environment to operate a lean FM station at El Rio. After discussions with four radio brokers and consultants last summer, I concluded that my 1991 proposal to buy all new equipment and to operate on a 24-hour live basis would not be a viable approach for operating in the 1993-94 competitive FM market in El Rio. I concluded that my application should be amended to proposed an initial operation of a satellite-delivered music service, augmented by live local news. I also concluded, based on professional advice from inter alia the California radio

consulting firm of Miller & Associates, that most of the needed equipment for the El Rio station could be purchased used.

3. My revised construction budget totals \$79,460. See Revised Budget, attached hereto as Appendix C. The proposed tower site is a multi-use site where two-phase electric power is already available. With respect to the studio, I have been assured by my radio consultant that the rental market in Ventura County is so competitive that I will be able to get studio improvements included in the rent base and up to six months of free rent with a multi-year lease. I have estimated first 90-day operating expenses at \$30,000. See Appendix C. hereto. In fact, because I will draw no salary for at least the first three months, use a contract engineer and rely on satellite-fed music programming, I believe my monthly expenses during the first three months will be no higher than \$10,000. Hence, my total estimated cost is \$109,460. Id.

4. To meet my estimated costs, I am now relying principally on my own net liquid assets and, as a cushion, for up to \$40,000 to be loaned to me by Joseph P. Dailey under the same terms as I discussed in the prior Selznick Exhibit No. 4. Mr. Dailey has confirmed to me that he will loan these funds if I so request. He also has so stated under oath in this proceeding. See Deposition Transcript at 65, attached hereto as Appendix B.

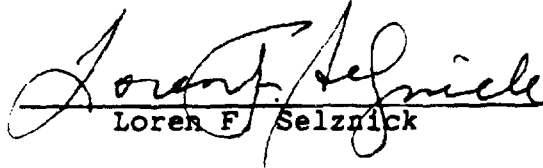
5. My net liquid assets have increased substantially since December 1991. As of December 30, 1993, my net liquid assets total at least \$147,000. Attached as Appendix D is a liquidity

analysis that shows my available net liquid assets totaling \$110,000. The value of my two apartments has been established by appraisals. See Appendices E and F. Since I propose selling my two apartments and handling the closings myself, no brokerage fees or closing costs will be involved. In addition, there is no need to budget for capital gains taxes upon the sales of my two apartments. The current basis of my Bank Street apartment is approximately \$87,000. My basis in the 11th Street apartment is approximately \$126,000. Thus, there will be no gain on the sale of either apartment.

6. My available net liquid assets totalling at least \$110,000 is sufficient[^] to meet my estimated costs of \$109,460. In addition, I have a loan commitment of \$40,000 from Mr. Dailey in case I choose not to invest all of my net liquid assets in the station or as a budget cushion should there be unbudgeted costs or start-up cost overruns.

VERIFICATION

I, Loren F. Selznick, do verify under penalty of perjury that the evidence contained in the foregoing Exhibit No. 5 is true and correct.


Loren F. Selznick

December 30, 1993

A

•

Joseph P. Dailey
Financial Statement
November 30, 1991

Appendix A

Personal Information

Social Security..... 179-84-8445
Address..... 565 Peralta Hills Drive
Anaheim, California 92807
Telephone..... (714) 282-1170 (Home)
(714) 640-5426 (Office)
Occupations..... Attorney
President
RunTime Technologies, L.P.
610 Newport Center Drive, Suite 600
Newport Beach, California 92660

Assets

Peralta Hills Home (Appraised Value).....	\$1,600,000
Cash	\$218,000
Partnership Profits	\$230,864
Salary Receivable.....	\$50,000
Partnership Inventory Interest	\$150,368
RunTime Technologies Investment At Cost.....	\$420,000
Personal Property.....	\$250,000
Automobiles.....	<u>\$20,000</u>
Total.....	\$2,939,232

Liabilities

Mortgage Debt.....	\$975,000
Bank Loans.....	\$44,970
Notes Payable.....	\$0
Income Taxes Payable.....	\$0
Charge Accounts Payable.....	<u>\$0</u>
Total.....	\$1,019,970

Net Worth.....	\$1,919,262
-----------------------	--------------------

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

**For Construction Permit for a
New FM Station on channel 279A
in El Rio, California**

ORIGINAL

Case No. 708 715

DEPOSITION OF:

JOSEPH P. DAILEY, ESQ.

MONDAY, NOVEMBER 22, 1993

10:05 A.M.

Reported by: MARY LOU CUSHNER

C.S.R. No. 6699

1 BY MR. DANIELS:

2 Q. So after December, 1991, other than the
3 financial statements, Exhibit 1, and Exhibit 2 that
4 you provided to her, did she ask for any other
5 writings?

6 A. What kinds of writings? As I told you, we
7 did exchange drafts of this agreement with Clanton,
8 and we did exchange over the modem the spreadsheet
9 that I told you about where she was doing a financial
10 projection of the business.

11 Q. But you did say that you felt that had
12 nothing to do with the loan related to this
13 application.

14 A. You didn't qualify it by "the loan." You
15 said did she ask for any other writings.

16 Q. Correct.

17 A. Relating to the loan, no. She never asked
18 for any writings relating to the loan until August,
19 1993, and she specifically said that they weren't
20 required because I indicated I would be prepared to
21 provide them if they were.

22 Q. So did you orally express a willingness to
23 lend Ms. Selznick the money for the El Rio station?

24 A. No, I didn't express an interest; I told her
25 that I would.

1 Q. Before December, 1991, do you remember which
2 conversation you did this in and what it is that you
3 said?

4 A. We just went over that. I'll recapitulate it
5 for you. At some point in 1991, in November, 1991,
6 and I date it all by the receipt of this check from my
7 former law firm, which has nothing to do with this
8 specifically except that I remember very clearly
9 waiting for it, having received it, and then Loren and
10 I going over my balance sheet, and that's how I'm able
11 to date the conversations. Those were about the third
12 week in November.

13 Before that there was -- and it may have been
14 a week or two before that -- she told me that she was
15 getting concerned that Derrick Cephas and his group
16 would not give her the commitment that she needed to
17 file her application. It was at that point that I
18 volunteered, and I said that, "Hey, I'll be glad to do
19 it. I think it's a great deal."

20 And following that, we had another
21 conversation -- it was very shortly thereafter --
22 where she became back and basically asked me to
23 confirm what I had previously said. She said, "Are
24 you really sure you want to do this?"

25 And I said, "Absolutely." I said, "This is a

1 very good deal." And I again reviewed what I saw as
2 the economics of the transaction -- that you had an
3 opportunity to get in on the ground floor and that
4 your basic security was knowing that the market was
5 pricing these stations substantially higher than their
6 cost, and it made sense. And I confirmed that.

7 Q. And during those two conversations you've
8 just spoken of, did you discuss any of the terms?

9 A. No, we never -- we never discussed the
10 terms. I told her that I would provide the financing.

11 Q. How much was requested?

12 A. Well, at that point she had said \$350,000,
13 \$360,000, one of those two. My recollection is
14 \$350,000. She asked me at some point to sign a
15 declaration in which she said it was 360,000, but it
16 was in that range, but I'm not sure. That was the
17 number we were talking about. But she had previously
18 told me what the cost was to do this, but at this
19 point we had not talked about the financing from me.
20 She was talking about getting financing from Derrick
21 Cephas and his group.

22 And as I said, it's possible, although I'm
23 not sure, because this would have been in October,
24 1991. I know I was in New York several times because
25 we had just gotten a major decision in litigation, and

1 debt and probably precluded the acquisition of further
2 debts --

3 Q. Let's go back --

4 A. -- or they could have been very healthy and
5 very strong and would have been a means for financing
6 any additional ventures; so it really depends on the
7 circumstances.

8 Q. Let's go back to December, 1991. So at
9 that --

10 A. It's November, 1991, I believe I testified.

11 Q. Okay. So with regard to November, 1991, when
12 you had the two conversations we have been speaking of
13 with regard to the willingness or commitment, as you
14 said, to loan the money regarding the station, at that
15 time was that a firm intention to make a loan, future
16 conditions permitting?

17 A. I'm not sure what you mean by "future
18 conditions permitting." I gave an unconditional
19 commitment to finance the money and to lend her the
20 money, and there was no discussion of future
21 conditions.

22 Q. And at this time, do you have a firm
23 intention to make the loan, future conditions
24 permitting?

25 A. Again, I don't know what you mean by "future

1 conditions." She told me at some point in the summer
2 of this year, the summer of 1993, following her
3 conversation with one of the brokers that I previously
4 referred to, that the amount that she would need to
5 start the station was substantially less than
6 \$350,000, that she was told by one broker that it
7 could be under \$100,000, and another broker, I
8 believe, may have mentioned that it was probably a
9 little over \$100,000. But whatever it was, she told
10 me that she was going to put in the amended
11 application and that she would be putting in more of
12 her own equity and that she only needed \$40,000,
13 approximately, from me.

14 I said, "Fine. You've got it." I previously
15 committed to \$350,000. Basically, I was going to do
16 what was necessary to assist Loren in this project,
17 not as a charitable or personal favor but from, again,
18 the basic economics of it. I just think it's a hell
19 of a deal.

20 Q. Let me get back to -- you said it then went
21 down to approximately \$40,000. So what do you
22 understand your commitment to be today?

23 A. My commitment today is -- I understand that
24 there is a controversy, and I'm not familiar with the
25 facts or circumstances of the controversy as to

1 whether her initial application is still in place or
2 whether an amended application; so my understanding is
3 it's either \$40,000 or \$350,000, and it doesn't make
4 any difference. She wants to do it, I believe, at the
5 \$120,000, but I understand that there was an adverse
6 ruling by the administrative law judge; so I'm not
7 sure what the circumstances are.

8 Q. Do you know if her own financial situation
9 has changed since you committed to the approximate
10 \$40,000 amount?

11 A. I have no reason to believe that it has. I'm
12 not aware of any.

13 Q. Have you seen any documentation to that fact?

14 A. I've never seen any documentation. No
15 documentation is necessary under these circumstances
16 as far as I'm concerned. If it was, I would get it.
17 I certainly, you know, do a number of business deals
18 and where you have to bring the lawyers in and dot the
19 I's and cross the T's when you bring them in, but when
20 you deal with someone like this, as far as I'm
21 concerned, it's like dealing with a member of your
22 family; so it's on a different basis.

23 Q. Have you ever seen her FCC application or any
24 part of it?

25 A. I believe I saw part of it relatively

1 certainly in the range.

2 You remember I had said that I could not
3 recall whether there was a working capital component,
4 and it's clear there obviously must have been a
5 working capital component to \$350,000, and I don't
6 know what it was.

7 Q. Do you know why that period of time was
8 chosen rather than some other?

9 A. No. It was my understanding it was based on
10 what she believed was necessary.

11 Q. What do you mean by the term "reasonable
12 assurance"?

13 A. I'll be very honest with you. Those were --
14 she drafted this. I don't know why she used the
15 weasel words "I gave her reasonable assurance." I
16 never said, "I will give you reasonable assurance." I
17 said, "Hell, I'll do the deal myself." Those were the
18 words or words to that effect that I used. It wasn't
19 reasonable. It was a flat assurance. I committed to
20 give her the money. But I guess, you know, she was
21 playing lawyer here or something, she was afraid I
22 wouldn't want to -- she used this strong language, but
23 as I told you, I gave her a flat commitment.

24 Q. Did you give her reasonable assurance in
25 1991?

1 A. I told -- it was in the -- sometime around
2 the third week of November, 1991, that I told her that
3 I would provide the financing, and I guess a lawyer
4 might describe that as reasonable assurance. I didn't
5 say, "I will give you reasonable assurance." I said,
6 "I'll give you the financing."

7 Q. Prior to signing this document, did you do
8 any research into the FCC definition of the term
9 "reasonable assurance"?

10 A. I'm trying to remember when I read the
11 instructions to the FCC application that Loren faxed
12 to me. I believe it was before this; so if that would
13 consist of research -- I do remember reading the
14 instructions that she faxed me and agreeing with her
15 that her earlier interpretation regarding the need for
16 a writing and a letter of commitment was accurate.

17 Q. But was that --

18 A. And that was the extent of whatever research
19 I did.

20 Q. Was that research done with regard to any FCC
21 definition of the term "reasonable assurance"?

22 A. I'm telling you exactly what I did. You can
23 characterize it any way you want. I looked at the
24 instructions on the FCC form, and I noted that there
25 seemed to be different requirements for financing from